

RAMATEX TEXTILES INDUSTRIAL SDN BHD

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v.

MENTERI SUMBER MANUSIA MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR

b

RAUS SHARIF J

[APPLICATION NO: R1-25-40-2001]

3 AUGUST 2004

LABOUR LAW: *Trade union - Recognition - Membership check - Whether discretion upon Director General of Trade Unions to choose modes of membership check*

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LABOUR LAW: *Trade union - Recognition - Decision of Minister to accord recognition to trade union - Whether Minister bound to give reasons for such decision*

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The second respondent ('the union') made a claim for recognition over the applicant's employees within the scope of its representation pursuant to s. 9(2) of the Industrial Relations Act 1967 ('the IRA'). The applicant informed the union that it was unable to consider the union's claim for recognition. The Director General of Industrial Relations ('the DGIR') subsequently informed the applicant that necessary steps had been taken under s. 9(4A) of the IRA to resolve the issue of recognition. On the DGIR's request, the Director General of Trade Unions ('the DGTU') conducted a membership check by verification exercise which revealed that 69.47% of the applicant's employees were within the scope of representation of the union and had become members of the union. The applicant was then advised to accord recognition to the union. The applicant refused to do so and the matter was referred to the Minister for his decision under s. 9(5) of the IRA. The applicant was subsequently informed by the DGIR that the Minister had issued an order to the applicant directing it to accord recognition to the union. The applicant thus filed an application for an order of *certiorari* to quash the decision of the Minister made under s. 9(5) of the IRA which directed the applicant to recognise the union. The applicant also applied for a declaration that regs. 62, 63 and 65(1) of the Trade Union Regulations 1959 which provided for membership check by verification was *ultra vires* and repugnant to arts. 5, 8 and 10 of the Federal Constitution, and therefore unconstitutional and invalid. The applicant

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- a* claimed *inter alia* that the Minister in arriving at his decision had committed an error of law and acted mechanically in failing to consider that the membership check by way of verification was not suitable and that the DGTU should have instead resorted to a membership check by way of secret ballot. The applicant also claimed that the decision of the Minister was flawed for
- b* failing to give reasons for the decision.

Held (dismissing the application with costs):

- c* [1] Under the Trade Union Regulations 1959, there are two statutory methods of conducting a membership check. Firstly by way of secret ballot and secondly by way of verification check. The law confers upon the DGTU the discretion to choose one of the two modes of membership check. The applicant had not shown how the DGTU in exercising his discretion, had acted in excess of or without jurisdiction. There was also no evidence to show that the DGIR, the DGTU or the Minister had acted outside the
- d* scope of the power conferred by the Trade Union Act 1959 and the rules made thereunder. There was no merit in the applicant's first ground of challenge. (pp. 581 c-d & 582 e-f)
- [2] The Minister is under no duty to give reasons when making his decision. The absence of the Minister's reasons could not be a reason for the court
- e* to nullify the Minister's decision. Accordingly, the applicant's second ground of challenge also failed. (p 583 g-h)

Case(s) referred to:

- f* *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Another Appeal* [1997] 1 CLJ 665 CA (**refd**)
- f* *Joseph Puspam v. Menteri Sumber Manusia, Malaysia & Anor* [2001] 4 CLJ 252 CA (**refd**)
- f* *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 CLJ 65 FC (**refd**)
- f* *Menteri Sumber Manusia v. Association of Bank Officers Peninsular Malaysia* [1999] 2 CLJ 471 FC (**refd**)
- g* *Minister of Human Resources & Ors v. National Union Of Hotel, Bar & Restaurant Workers, Semenanjung Malaysia & Another Appeal* [1998] 1 CLJ 215 CA (**refd**)
- g* *Rohana Ariffin & Anor v. Universiti Sains Malaysia* [1988] 1 CLJ 559 HC (**refd**)
- g* *Senja (M) Sdn Bhd v. Minister of Human Resources & Anor* (OM No. 25-92-2001) (Unreported) (**refd**)
- h* *Tanjong Jara Sdn Bhd v. Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124 (**refd**)

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Legislation referred to:

Industrial Relations Act 1967, ss. 9(2), (5), (4A)
Trade Union Regulations 1959, regs. 62, 63, 65(1)
Federal Constitution, arts. 5, 8, 10
Industrial Relations Regulations 1980, reg. 4(1)(c)

For the appellant - Raymond TC Low; M/s Shearn Delamore & Co

For the 1st respondent - Aslam Zainuddin SFC

For the 2nd respondent - S Muhendaran; M/s Muhendaran Sri

Reported by Andrew Christopher Simon

JUDGMENT

Rauf Sharif J:

In this application, the applicant moves before this court for the following relief:

- (i) an order of *certiorari* to quash the decision of first respondent (“the minister”) made under s. 9(5) of the Industrial Relations Act 1967 on 7 March 2001 which directed the applicant to recognize the second respondent; and
- (ii) an order of declaration that regs. 62, 63 and 65(1) of the Trade Union Regulations 1959 which provide for membership check by way of verification is *ultra vires* and repugnant of art. 5, 8 and 10 of the Federal Constitution and therefore, unconstitutional and invalid by virtue of arts. 4 of the Federal Constitution.

The material facts which led to this application by the applicant are as follows.

On 18 March, 2000, by way of a letter to the applicant, the second respondent (“the union”) made a claim for recognition (“the recognition claim”) over the applicant’s employees within the scope of its representation pursuant to s. 9(2) of the Industrial Relations Act 1967 (“the IRA”).

On 3 April 2000, the applicant informed the union that it would be unable to consider the union’s claim for recognition. A month later, the applicant was notified by the Director General of Industrial Relations (DGIR) that the necessary steps had proceeded under s. 9(4A) of the IRA to resolve the issue of recognition claim.

a The DGIR then notified the Director General of Trade Union (DGTU) of the recognition claim and sought his assistance to conduct a membership check. The aforesaid request was pursuant to reg. 4(1)(c) of the Industrial Relations Regulations of 1980.

b Pursuant to the request of the DGIR to the DGTU, a membership check by verification exercise was carried out by DGTU on 16, 17 & 24 August 2000 and 6 November 2000. The applicant subsequently received a letter of 4 December 2000 from DGIR which stated that the membership check had been carried out and the results revealed that 69.47% of the employees within the scope of representation of the union had become members of the aforesaid union as at 18 March 2000. In view of this, the applicant was advised to accord recognition to the union.

d The applicant took the stand that it was not accepting the recommendations of DGIR and DGTU. The matter was then referred to the Minister for a decision under s. 9(5) of the IRA. On 17 March 2001, the applicant received a letter of 12 March 2001 from DGIR informing the applicant that the Minister had on 7 March 2001 issued an order to the applicant directing it to accord recognition to the union. Hence, this application by the applicant.

e As stated earlier, the applicant is seeking for an order of *certiorari* to quash the decision of the Minister made under 9(5) of the IRA, which directed the applicant to recognize the union. Thus the issue before this court is whether *certiorari* would lie against the decision of the Minister on the grounds as advanced by the applicant which are as follows:

f (1) The Minister, in arriving at his decision dated 7 March 2001, committed an error of law and acted mechanically by his failure to consider a membership check by way of verification exercise was not suitable in the circumstances of the matter and the DGTU should have resorted to the membership check by way of secret ballot under the Trade Union Regulations 1959; and

g (2) The Minister, in arriving at his decision dated 7 March 2001, acted in breach of procedural fairness when it failed to provide any reasons to support his decision.

h **Findings**

The 1st Ground

It is the submission of the applicant that the Minister in arriving at his decision dated 7 March 2001 committed an error of law and acted mechanically by

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his failure to consider a membership check by way of verification exercise was not most suitable in the circumstances of the matter and that the DGTU should have resorted to the membership check by way of secret ballot under the Trade Union Regulations 1959. a

It must be noted that the decision of the Minister here was made under s. 9(5) of the IRA. Under the provisions of the IRA, a trade union must satisfy two requirements before it can be accorded with recognition. Firstly, it must satisfy that it is competent to represent the employees of a particular industry under its membership rules and there must be “similarity in trade, industry and profession” between the trade union and the company. Secondly, it must have sufficient members to represent the employees. (See *Tanjong Jara Sdn Bhd v. Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124). The second requirement is commonly known as the “membership check”. Under the Trade Union Regulations, there are two statutory methods of conducting a membership check. Firstly, by way of secret ballot and secondly, by way of verification check. b
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The applicant did not dispute the first requirement. The applicant complaint was with regard to second requirement. According to the applicant, the membership check must be done by way of secret ballot, as this is a better mode to ascertain whether the employees of the applicant want to be the members of the union. e

The learned senior federal counsel on the other hand submitted that the law gives the DGTU the discretion as to which method to be used in carrying out the membership check. In this case the DGTU has decided that the membership check would be by way of verification exercise. Thus, he urged this court not to interfere the DGTU’s exercise of discretion bearing in mind this is a judicial review. f

I am in agreement with the learned senior federal counsel. From the facts of this case, it is clear that the applicant had failed to object to the verification exercise eventhough the DGTU, *vide* a letter dated 25 July 2000 (exh. “CHH7”) had informed the applicant that a membership verification exercise would be conducted. Thus, the Minister cannot be faulted when he decided to adopt the recommendations of the DGIR and DGTU who had carried out the membership check by verification exercise. g

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- a* The applicant relied on two cases to support its argument, namely *Senja (M) Sdn Bhd v. Minister of Human Resources & Anor* (OM No. 25-92-2001) and *Minister of Human Resources & Ors v. National Union Of Hotel, Bar & Restaurant Workers, Semenanjung Malaysia & Another Appeal* [1998] 1 CLJ 215. But I am of the view the two cases do not support the applicant's
- b* submission. In *Senja's* case the company had requested the DGTU to conduct a secret ballot. However, the DGTU rejected the company's request. But in the present application, the applicant never made any such request to the DGTU as well as objected when the DGTU informed the applicant that membership verification would be carried out. In the *National Union Hotel & Restaurant Worker's* case, the Hotel wrote to the DGIR requesting for a secret ballot to be held for the purpose of membership check. Meanwhile the union wrote to the DGTU informing him that it wanted to have a membership verification exercise to ascertain the majority. The DGTU made his decision to adopt the secret ballot method. The union was not happy with the outcome of the secret ballot and applied to the High Court to quash the Minister's decision. The High Court granted the order of *certiorari* principally on the ground that the DGTU had not given his reasons for selecting the secret ballot method. The Court of Appeal upheld the High Court decision. In the present case the applicant choose not to object to the membership verification exercise carried out by DGTU until the decision which was adverse to the applicant was reached. To me,
- e* for the applicant to complaint now is clearly an afterthought.

- The law confers the DGTU the discretion to choose one of the two modes of membership check. In this respect the applicant has not shown as to how the DGTU in exercising his discretion is said to have acted in excess or without jurisdiction. Neither was there a tinge of evidence to show the DGIR, the
- f* DGTU or the Minister had acted outside the scope of the power conferred by TUA and the rules made thereunder. Accordingly, I find there is no merit on the applicant first ground of challenge.

The Second Ground

- g* The applicant contends that the decision of the Minister was also flawed because:
- (a) Failure to give reasons for his order for recognition;
- h* (b) Failure to furnish reasons for the adoption of the recommendation of the of the DGIR; and
- (c) Failure to furnish any reasons to justify why verification method was preferred instead of secret ballot.

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To support his argument, learned counsel for the applicant relied on the cases of *Rohana Ariffin & Anor v. Universiti Sains Malaysia* [1988] 1 CLJ 559, *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Another Appeal* [1997] 1 CLJ 665 CA, *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 CLJ 65 FC and *Menteri Sumber Manusia v. Association of Bank Officers Peninsular Malaysia* [1999] 2 CLJ 471 FC. In response, the learned counsel for the second respondent cited the cases of *Joseph Puspam v. Menteri Sumber Manusia, Malaysia & Anor* [2001] 4 CLJ 252 CA and *Minister of Human Resources & Ors v. National Union Of Hotel, Bar & Restaurant Workers, Semenanjung Malaysia & Another Appeal* [1998] 1 CLJ 215 CA to demonstrate that the Minister is not compelled to give his reasons, when making his decision.

With respect, I am in agreement with the contention of the learned counsel for the second respondent. In *Joseph Puspam's* case the Court of Appeal held as follows:

The case of *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan (And Another Appeal)* [1966] 3 AMR 3181 relied on by the counsel for the appellant doesn't subscribe to the idea that the Minister is compelled to give reason for his decision. Further the Minister's refusal to give any reason for the decision doesn't nullify the decision. This Court is bound by the decision of its superior court where it has been established that the Minister is not required to give any reason when exercising his discretion under section 20(3) of the Industrial Relation Act 1967, therefore the Court cannot compel the Minister to do so.

In the *National Union of Hotel's* case the court held as follows:

The absence of reasons for a decision where there was no duty to give them couldn't of itself provide any support for the suggestion irrationality of the decision. The Judge ought to have asked himself the question whether the Director General of Trade Union decision was unreasonable. Having done so, and if had given an affirmative answer, then and then only, ought to have proceeded to consider the materiality or relevance of the failure on the part of the Director General of Trade Union to provide reason.

Clearly, from the above two cases the Minister is under no duty to give reasons when making his decision. In other words, the absence of Minister's reasons cannot be a reason for the court to nullify the Minister's decision. Accordingly, the second ground of challenge by the applicant must also fall.

In the circumstances, the application's application is dismissed with costs.